



FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36032]

Omnitrax Holdings Combined, Inc.—Acquisition of Control Exemption—Alabama & Tennessee River Railway, LLC, ET AL.

On May 5, 2016, OmniTRAX Holdings Combined, Inc. (OmniTRAX) filed a petition for exemption from the requirements of 49 U.S.C. 11323-25.¹ OmniTRAX seeks after-the-fact Board authority for transactions that occurred on December 31, 2015, where OmniTRAX acquired direct and exclusive control over 18 Class III railroads.²

¹ Although the petition initially states that it is seeking an exemption from the requirements of only 11324 and 11325 (Pet. 2), it later specifically references 11323 as well (Pet. 6, 9).

² The railroads and the state(s) they operate in are as follows:

- *Alabama & Tennessee River Railway, LLC: Alabama
- *Alliance Terminal Railroad, LLC: Texas (not currently in operation)
- *Brownsville & Rio Grande International Railway, LLC: Texas
- *Chicago Rail Link, LLC: Illinois
- *Fulton County Railway, LLC: Georgia
- ⁺Georgia & Florida Railway, LLC: Georgia, Florida
- *Georgia Woodlands Railroad, LLC: Georgia
- *Great Western Railway of Colorado, LLC: Colorado
- ⁺Illinois Railway, LLC: Illinois
- *Kettle Falls International Railway, LLC: Washington (and British Columbia, Canada)
- *Manufacturers' Junction Railway, LLC: Illinois
- ⁺Nebraska, Kansas & Colorado Railway, LLC: Nebraska, Kansas, Colorado
- *Newburgh & South Shore Railroad, LLC: Ohio
- *Northern Ohio & Western Railway, LLC: Ohio
- *Panhandle Northern Railroad, LLC: Texas
- Peru Industrial Railroad, LLC: Illinois
- ⁺Sand Springs Railway Company: Oklahoma
- ⁺Stockton Terminal and Eastern Railroad: California

(Pet. 3.)

(Pet. 2-5.) OmniTRAX states that its failure to obtain proper Board authority prior to the transactions was due to inadvertent oversight. (Pet. 2.)

This proceeding is related to two pending class exemption proceedings: Docket No. FD 36018, in which Central Texas & Colorado River Railway, LLC (CTCR), a noncarrier subsidiary of OmniTRAX, seeks to acquire and operate a line of railroad, and Docket No. FD 36019, in which OmniTRAX seeks to continue in control of CTCR upon its becoming a Class III rail carrier. On May 24, 2016, OmniTRAX filed a supplement to its petition for exemption, providing additional information and a request for expedited action so as not to delay capital improvement plans for the CTCR. By decision served on May 26, 2016, the Board held the related proceedings in Docket Nos. FD 36018 and FD 36019 in abeyance pending action on OmniTRAX's petition for exemption in this proceeding. Cent. Tex. & Colo. River Ry.—Acquis. & Operation Exemption—Line of Heart of Tex. R.R., FD 36018, et al. (STB served May 26, 2016).

OmniTRAX's petition for exemption will be granted. Because we are granting the petition for exemption in this proceeding, we are also reactivating the proceedings in Docket Nos. FD 36018 and FD 36019 by serving and publishing those notices in the Federal Register.

BACKGROUND

OmniTRAX is a non-carrier holding company established to control short line railroads. (Pet. 2.) OmniTRAX states that it is owned by three separate and independent corporations, none of which possess a controlling interest in OmniTRAX.³ (Id. at 5.)

³ OmniTRAX states that “no individual or corporate entity possesses a direct or indirect controlling interest in OmniTRAX at this time.” (Pet. 5.) Control is a fact-
(continued . . .)

Prior to the December 31, 2015 transactions in which OmniTRAX acquired direct and exclusive control of 18 Class III rail carriers, Patrick D. Broe (Broe) indirectly controlled 17 of the 18 Class III railroads. Twelve of the railroads⁴ were directly controlled by OmniTRAX Holdings, LLC (OTH), which was controlled by OmniTRAX, Inc. (OTI), which was in turn controlled by Broe. In addition, Broe also indirectly controlled 5 other railroads,⁵ but through other “corporate arrangements not involving OTI or OTH.” (Pet. 4.)

Additionally, Broe held a non-controlling interest in the 18th railroad, Peru Industrial Railroad, LLC (PIR), an independent short line operating in Illinois. PIR connects with one of the other Class III railroads—Illinois Railway, LLC (IR)—that was acquired in the OmniTRAX transactions. These two railroads connect at Peru, Ill., but OmniTRAX asserts that the respective railroad lines do not access or serve any common industry or customer(s). OmniTRAX states that IR previously obtained exemption

(. . . continued)

intensive determination, and this decision makes no finding based on this statement by OmniTRAX. If, as one example, an individual directly or indirectly controlled two of the three parent corporations of OmniTRAX, that individual would also need Board authority.

⁴ These twelve carriers are denoted with an asterisk in footnote 3.

⁵ These five carriers are denoted with a plus symbol in footnote 3. Although the petition did not provide details of the relationship between Broe and these carriers, in Patrick D. Broe—Acquisition of Control Exemption—Stockton Terminal & Eastern Railroad, FD 35525 (STB served July 15, 2011), Broe obtained authority to acquire indirect control via ST&E Holdings, Inc., of one of the five carriers, the Stockton Terminal & Eastern Railroad Company. Later, in Patrick D. Broe—Acquisition of Control Exemption—Sand Springs Railway, FD 35829 (STB served June 12, 2014), Broe obtained authority to acquire indirect control via Sand Springs Holdings, LLC, of another of the five carriers, the Sand Springs Railway Company. In Broe’s 2014 filings with the Board in the latter docket, he noted that he controls BNS Holdings, Inc., a noncarrier that indirectly controlled the three remaining carriers. Broe Notice of Exemption 4, Patrick D. Broe—Acquis. of Control Exemption—Sand Springs Ry., FD 35829.

authority to lease and operate over PIR's lines in Illinois Railway—Lease & Operation Exemption—Rail Line of Peru Land Acquisition 2, LLC, FD 35886 (STB served Dec. 24, 2014). (Suppl. 6.)

As mentioned above, OmniTRAX requests expedited action because this proceeding is the limiting factor to obtaining regulatory authority in the two related proceedings in Docket Nos. FD 36018 and FD 36019. OmniTRAX states that holding those dockets in abeyance could result in delays to critical railroad physical plant improvements. (Suppl. 7.)

DISCUSSION AND CONCLUSIONS

The acquisition of control of a rail carrier (or carriers) by a person that is not a rail carrier but that controls any number of rail carriers requires approval by the Board pursuant to 49 U.S.C. 11323(a)(5). Under 10502(a), however, we must exempt a transaction or service from regulation if we find that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 10101; and (2) either the transaction or service is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

In this case, an exemption from the prior approval requirements of 49 U.S.C. 11323-25 is consistent with the standards of 10502. Detailed scrutiny of the proposed transactions through an application for review and approval under 11323-25 is not necessary here to carry out the RTP. Approval of the transactions at issue will result in a change in ownership of the 18 aforementioned rail carriers with no lessening of competition and will bring those railroads under the oversight of established short-line management. An exemption will promote the RTP by minimizing the need for federal

regulatory control over the transactions, 10101(2); ensuring the development and continuation of a sound rail transportation system that will continue to meet the needs of the public, 10101(4); reducing the barriers to entry and exit from the rail transportation industry, 10101(7); encouraging efficient management, 10101(9); and providing for the expeditious resolution of this and the related proceedings, 10101(15). Other aspects of the RTP will not be adversely affected.

Nor is detailed scrutiny of the proposed transactions necessary to protect shippers from an abuse of market power. According to OmniTRAX, no shipper will lose access to rail service as a result of the transactions, and operations will continue as they did before OmniTRAX assumed control. (Pet. 9.) Further, OmniTRAX states that the relevant agreements related to the acquisitions contain no provision that would limit any of the 18 railroads' future interchange of traffic to or from third-party connecting carriers. (*Id.*) Although PIR connects with IR, OmniTRAX states that their lines do not access or serve any common industry or customers. In addition, OmniTRAX states that "PIR's only outlet to the balance of the interstate railroad network is via its connection to IR," that PIR and its customers would continue to rely upon intermediate IR service to reach line-haul carriers. (Suppl. 6.) Accordingly, based on the record, these transactions do not appear to shift or consolidate market power; therefore, we do not find that regulation is necessary to protect shippers from the abuse of market power.⁶

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. The Board,

⁶ As there is no evidence that regulation is needed to protect shippers from the abuse of market power, we do not need to determine whether the transaction is limited in scope. *See* 49 U.S.C. 10502(a).

however, is not required to impose labor protective conditions when only Class III rail carriers are involved in a transaction that falls under 49 U.S.C. 11324-25, as is the case here. 49 U.S.C. 11326(c).

These transactions are categorically excluded from environmental review under 49 CFR. 1105.6(c)(2)(i) because they will not result in any significant change in carrier operations. Similarly, the transactions are exempt from the historic reporting requirements under 49 CFR. 1105.8(b)(3) because they will not substantially change the level of maintenance of railroad properties.

As indicated, OmniTRAX has requested expedited action to avoid delays to critical railroad physical plant improvements. We find OmniTRAX's request to be reasonable. We will grant the exemption and the exemption will be effective immediately.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts the above-described transactions from the prior approval requirements of 11323-25.
2. Notice will be published in the Federal Register.
3. This exemption will be effective on July 14, 2016.

Decided: July 11, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Brendetta S. Jones

Clearance Clerk

[FR Doc. 2016-16671 Filed: 7/13/2016 8:45 am; Publication Date: 7/14/2016]